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6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA  
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9 United States of America, ) CR-08-0307-PHX-FJM (ECV)  
10 Plaintiff, )  
11 vs. ) **MENTAL TREATMENT**  
12 ) **AND TRANSPORTATION**  
13 Craig Miller, ) **ORDER**  
14 Defendant. )  
15 \_\_\_\_\_ )

16 This is the time set for status hearings re: mental competency and detention.<sup>1</sup>  
17 The Government is represented by AUSA Sharon Sexton. Defendant is present and is  
18 represented by counsel, Eugene Marquez. Proceedings are electronically recorded.

19 On May 28, 2008, the undersigned Magistrate Judge granted defense counsel's  
20 Motion for Determination of Competency. (docket # 24) Defendant was timely evaluated  
21 for mental competency by Kathryn A. Menendez, Ph.D., a Board certified psychologist in  
22 Phoenix. Both counsel represent that they have reviewed a copy of Dr. Menendez' sealed  
23 forensic psychiatric report, dated July 25, 2008, which concludes that Defendant "is  
24 incompetent to proceed . . . [but Dr. Menendez] believe[s] that Mr. Miller can be restored  
25 within a reasonable time. . . ." (sealed docket # 36 at 7 - 8)

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28 <sup>1</sup> In light of Dr. Menendez' report and findings, this Magistrate Judge recommends  
that Defendant be re-arraigned if restored to competency.

1           The Government's counsel orally moves that Defendant be hospitalized by the  
 2 Bureau of Prisons ("BOP") and medical efforts and treatment undertaken to restore  
 3 Defendant to competency. Defense counsel concurs in the oral motion. Both counsel  
 4 expressly consent on the record that the undersigned may enter the appropriate order pursuant  
 5 to 28 U.S.C. § 636(b)(1)(A) and (b)(3), LRCrim 57.6(d)(8),<sup>2</sup> and the broad interpretation  
 6 recently given 28 U.S.C. § 636(b)(3)<sup>3</sup> by the Supreme Court in *Gonzalez v. United States*,  
 7 \_\_\_ U.S. \_\_\_, 128 S.Ct. 1765 (2008) (express consent by counsel suffices to permit United  
 8 States magistrate judge to preside over jury selection in felony trial).

9           There being no opposition to the oral motion by Government's counsel and it  
 10 likely that Defendant is suffering from a mental disease or defect,

11           **IT IS ORDERED** that the Government's oral motion for hospitalization and  
 12 treatment is **GRANTED**. Pursuant to 18 U.S.C. § 4241(b) and (d)(1), Defendant is hereby  
 13 committed to the custody of the Attorney General for hospitalization and psychiatric  
 14 treatment in a suitable health care facility for a reasonable period of time, **not to exceed four**  
 15 **(4) months**, as is necessary to determine whether there is a substantial probability that in the  
 16 foreseeable future Defendant will attain the mental capacity to permit these criminal  
 17 proceedings to proceed; and for such an additional reasonable period of time upon timely  
 18 written request by the health care facility for good cause shown until Defendant's mental  
 19 condition is so improved that court proceedings may proceed against him according to  
 20 federal law, whichever is earlier.

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 22           <sup>2</sup> Local Rule 57.6(d)(8) provides:

23           (8) Enter orders for examination to determine mental competency; hold  
 24           hearings and conduct examinations to determine mental competency; and  
 25           enter orders determining mental competency except any motion to  
 26           involuntarily medicate a defendant in an effort to restore competency.

27           LRCrim 57.6(d)(8)

28           <sup>3</sup> Title 28 U.S.C. § 636(b)(3) indicates that "(3) A magistrate judge may be assigned  
 such additional duties as are not inconsistent with the Constitution and laws of the United  
 States." 28 U.S.C. § 636(b)(3)

1 In an effort to facilitate and expedite BOP's treatment of Defendant and  
2 thereby reduce the cost and amount of time Defendant remains at its medical facility, the  
3 Bureau of Prisons and its medical personnel may obtain copies of Dr. Menendez' sealed  
4 forensic mental competency evaluation, dated July 25, 2008, and Defendant's numerous prior  
5 psychiatric and medical records by contacting defense counsel, Eugene Marquez, directly at  
6 (602) 631-9595 (phone) and (602) 274-8585 (fax).

7 A psychiatric or psychological report shall be timely filed with the Court  
8 pursuant to the provisions of § 4247(b) and (c), advising, at a minimum, (1) whether  
9 Defendant has been restored to competency, (2) whether Defendant has voluntarily taken  
10 medication and, if so, the identity and dosage of such medication that will maintain  
11 Defendant's competency *pendente lite*, (3) if Defendant has not been restored to competency,  
12 a medical recommendation on future treatment or other disposition in accordance with  
13 federal law, and (6) whether Defendant presents a danger to the community.

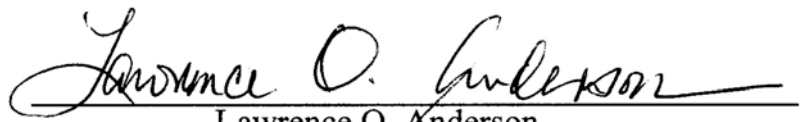
14 **IT IS FURTHER ORDERED** that Defendant shall not be involuntarily  
15 medicated, absent his express consent, absent the existence of a true emergency solely for  
16 the safety of Defendant or BOP's medical personnel in BOP's independent medical judgment  
17 or upon further order of the assigned District Judge, the Honorable Frederic J. Martone.

18 **IT IS FURTHER ORDERED** that upon Defendant's restoration of  
19 competency and return to the District of Arizona for further court proceedings, the U.S.  
20 Marshal Service shall obtain a written list of all prescription medications, if any, including  
21 all psychotropic drugs and their dosages administered to Defendant at discharge from his  
22 hospitalization and treatment and a copy of Defendant's chronological ("chrono")  
23 prescription drug history at the subject health care facility and shall provide said records to  
24 Corrections Corporation of America ("CCA"), Central Arizona Detention Center, on or  
25 before Defendant's physical return so that Defendant does not decompensate during the  
26 transition back to CCA.

27 **IT IS FURTHER ORDERED** that Defendant shall remain temporarily  
28 detained until further order of the Court.

1                   **IT IS FURTHER ORDERED** that for purposes of judicial continuity, this  
2 matter is placed on the undersigned's calendar, rather than the criminal duty magistrate  
3 judge's, for status conferences re: mental competency and detention for **Monday,**  
4 **December 8, 2008 at 1:30 p.m.**

5                   DATED this 5th day of August, 2008.

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10                   Lawrence O. Anderson  
11                   United States Magistrate Judge  
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25 cc: E-mailed the USMS order on 8/6/08. smh  
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